

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF CORRECTION

103 CMR 491.00: INMATE GRIEVANCES

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491.01 Purpose

The purpose of 103 CMR 491.00 is to establish rules and procedures governing the filing and resolution of inmate grievances by. It is the policy of the Department of Correction

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(Department) that every individual committed to its custody shall have access to an internal grievance mechanism that provides a forum for the fair and impartial resolution of legitimate inmate complaints. The inmate grievance process is a non-adversarial administrative process which promotes problem resolution and provides inmates-

491.02 Authorization

with a means to address their concerns in a responsible manner, thus enhancing skills for successful reentry. The grievance process also provides Department administrators with a vital management tool by enhancing awareness of developing trends and specific problems, thus providing an opportunity to improve institutional functions affecting the prison environment. 103 CMR 491.00 is promulgated pursuant to M.G.L. c. 124, §1(i) and (q) and c. 127, §38E. 103 CMR 491.00 is not intended to confer any procedural or substantive rights or any private cause of action not otherwise granted by state or federal law.

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491.02: Statutory Authorization

103 CMR 491 is issued pursuant to M.G.L. c.124, 1 (i) and (q) and c.127, 38E.

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491.03 Cancellation

103 CMR 491.00 cancels all previous ~~departmental~~Department and ~~institutional~~institution policy statements, bulletins, directives, orders, notices, rules or regulations regarding inmate grievances.

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491.04 Applicability

103 CMR 491.00 is applicable to all employees and inmates at all state correctional institutions ~~within the Department of Correction.~~

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491.05 Access to Regulations

(1) 103 CMR 491.00 shall be maintained within the Central Policy File of the Department and shall be accessible to all Department employees. A copy of 103 CMR 491.00 shall also be maintained in each Superintendent'ssuperintendent's Central Policy File and at each inmate library, including all inmate law libraries. Additionally, all new inmate commitments and incoming inmate transfers shall be notified of Department and Institution Grievance Procedures during the inmate's orientation.

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(2) Appropriate Department personnel shall verbally notify each new inmate commitment and incoming inmate transfer of Department and Institution Grievance and Step 1 Complaint Resolution Procedures during the inmate's orientation. Moreover, appropriate Department personnel shall notify each new inmate commitment and incoming inmate transfer of Department and Institution Grievances and Informal Complaint procedures in writing through the orientation handbook in accordance with 103 DOC 401, Booking and Admissions. Written notification shall include, but is not limited to, location where 103 CMR 491, Inmate Grievances, is maintained, the location where grievance and grievance appeal forms may be obtained, and the location to deposit/mail grievances. 103 CMR 491, Inmate Grievances, grievance forms, institution procedures, and orientation handbooks shall be available in both English and Spanish.

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491.06 Definitions

Abuse. ~~The of the Grievance Process~~ – Abuse of the grievance process includes, but is not limited to, the filing of repetitive grievances addressing the same issue where ~~sufficient~~the required time ~~for response has frames have~~ not elapsed or where a ~~valid response~~final decision has already been ~~provided~~rendered; the filing of an excessive number of frivolous grievances; the appeal of a grievance settled in the inmate's favor; ~~or the submission of knowingly false documents~~; the intentional filing of emergency grievances that are not emergencies; or repetitive grievances concerning issues not grievable ~~hereunder.~~under 103 CMR 491, Inmate Grievances.

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Departmental Grievance Coordinator – ~~a designee~~Appellate Authority – Staff members responsible for rendering grievance appeal decisions.

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Business Day – Monday through Friday, excluding holidays.

Director of Communications and Administrative Resolution – The administrator appointed by the Commissioner who ~~aets~~is responsible for overseeing the inmate complaint and grievance processes.

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Department Grievance Manager - The staff person who oversees the daily management and operation of the inmate grievance process and who may act as a ~~reviewan~~appellate authority for grievances. The Department Grievance Manager shall report directly to the Director of Communications and Administrative Resolution.

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Emergency Grievance - grievance processed in an expedited manner to resolve an issue in which a delay may cause substantial risk of personal injury or other damages.

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Grievance - a written complaint filed by an inmate on the inmate's own behalf on the prescribed form in accordance with 103 CMR 491.00, Inmate Grievances.

Grievant - any Department ~~of Correction~~ inmate who files a grievance on his own behalf in accordance with 103 CMR 491.00, Inmate Grievances.

Inmate Management System (IMS) – The Department’s automated information system that provides processing, storage, and retrieval of inmate-related information needed by the Department.

Institutional Grievance Coordinator, ~~the~~(IGC) - staff ~~person~~persons responsible for ~~attempting resolution of grievances~~rendering grievance decisions, and for coordinating the operation of the grievance procedure, at the institutional level.

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491.07 Informal Resolution

Step 1 Informal Complaint Form – a form utilized in the informal resolution process by which inmates may make a request or complaint to staff.

Step 1 Informal Complaint Resolution Process – the process inmates must utilize as a first step to resolve their complaints prior to submitting a formal grievance.

491.07 Institution Procedures

The Superintendent of each

~~Each~~ institution ~~should~~shall develop ~~informal measures~~and implement written institutional procedures in accordance with 103 CMR 491. Procedures shall specifically address 103 CMR 491.04, 07, 09, 13 (4), and 21 (2) (A).

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491.08 Inmate Access to the Grievance Process

(1) All inmates shall have equal access to the grievance process. Whenever necessary, provisions shall be made to ensure access for the impaired or disabled, illiterate, and/or those with language barriers. Appropriate provisions, including, but not limited to, the use of a staff interpreter shall be made for those inmates who do not adequately read, speak, or understand English. Inmates may utilize the telephone interpreter service in accordance with 103 DOC 488, Telephonic Interpreter Service, available at each inmate library and on the Department’s website at <http://www.mass.gov/doc/policy>. Inmates shall not be utilized as translators. Use of an interpreter or any other provisions shall be documented in the applicable IMS Grievance screen. Whenever an extension of a time frame is necessary to secure the services and accommodations of 103 CMR 491, it shall be granted in accordance with 103 CMR 491.18.

~~(2) resolving inmate complaints whereby inmates~~ Inmates shall have unimpeded access to grievance and appeal forms. Forms shall be readily available to all inmates, regardless of housing unit. Inmates may obtain a grievance or appeal form from locations and staff designated by the superintendent. The superintendent shall ensure that grievance and appeal forms are ~~encouraged to communicate their problem to the staff person responsible in the particular area of the problem, e.g., Correction Program Officer,~~available in all general population

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housing units. Inmates housed elsewhere shall be provided forms upon request. Additionally, inmates on a mental health watch shall be provided forms upon request, provided there is no contraindication pursuant to the mental health watch order. Under no circumstances shall a grievance or appeal form be withheld from an inmate.

491.09 Reprisals

Inmates shall have the right to utilize the grievance process without fear of reprisal. Retaliation against, or harassment of, anyone participating in the resolution or investigation of a grievance, by anyone, including, but not limited to, a staff member, contract staff member, a vendor, volunteer, and/or inmate, shall not be tolerated.

491.10 Informal Resolution

(1) The grievance process is a mechanism to address complaints and is not the appropriate department head or other institutional staff forum to make routine requests.

(2) The Step 1 Informal Complaint Resolution Process is the preferred mechanism for the resolution of inmate complaints. Effective communication between institution staff and inmates is essential. Most requests and complaints can be addressed easily and quickly through direct communication. Inmates shall attempt to address issues at the lowest institutional level possible. Inmates shall express their complaints in a respectful, constructive manner. Staff awareness as to the need for prompt attention and response to these complaints issues is essential and will minimize the use of formal grievance procedures.

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(3) Pursuant to the Department Step 1 Informal Complaint Resolution Standard Operating Procedures, each institution shall maintain an informal complaint resolution process which shall include, but not be limited to, the utilization of the standardized informal complaint form. The Step 1 Informal Complaint Resolution Standard Operating Procedures is available at each inmate library and on the Department's website at <http://www.gov/doc/policy>, attached to the 103 CMR 491, Inmate Grievance regulation.

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(4) While inmates are encouraged to pursue informal measures prior to filing a grievance, utilize various available avenues for addressing complaints before submitting an informal complaint form, as indicated in the Step 1 Informal Complaint Resolution Standard Operating Procedures, they shall not be required to do so. Inmates are required, however, to utilize the Step 1 Informal Complaint Form process before filing a grievance.

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(5) Utilization of the Step 1 Informal Complaint Resolution process is not required for:

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(A) Emergency grievances, which shall be submitted and processed pursuant to 103 CMR 491.17.

(B) Staff misconduct allegations, which shall be filed and reviewed administratively pursuant to the 103 DOC 522 Internal Affairs Unit policy.

491.11 Staffing Requirements

(1) The Institution Grievance Coordinator shall be impartial and may not simultaneously hold any other position that may present a potential conflict of interest, including, but not limited to, property or mail officer.

(2) ~~The Superintendent~~, in consultation with the Department Grievance Manager, shall appoint the Institution Grievance Coordinator.

The Institution Grievance Coordinator shall report directly to the Superintendent.~~491.08~~
General Requirements

(1) ~~Classification, including identification of an inmate as a sex offender, and~~ The following issues are not grievable under 103 CMR 491, Inmate Grievances:

(A) Any decision or recommendation for which there is an existing appeal mechanism, including, but not limited to, classification, disciplinary decisions and recommendations ~~are not grievable under 103 CMR 491.00 as there are existing appeal mechanisms for each of these areas.~~ Decisions, observation of behavior report decisions and recommendations, decisions and recommendations concerning therapeutic diets ~~are not grievable under 103 CMR 491.00 as there is an existing complaint procedure pursuant to 103 CMR 761.00.~~ Additionally, ~~religious practices, and~~ medical or clinical decisions related to an inmate's physical or mental condition ~~shall not be grievable under 103 CMR 491.00,~~ as the medical contractor is required to maintain its own grievance procedure, however, matters concerning access to medical or mental health care are grievable.

~~No grievance shall be accepted which is~~ (B) Requests for reasonable accommodations, as they may be requested pursuant to 103 DOC 408, Special Accommodations for Inmates, available at each inmate library and on the Department's website at <http://mass.gov/doc/policy>. However, matters concerning access to approved reasonable accommodations are grievable;

(C) Specific incidents that have already been grieved and where a final decision has been rendered;

(D) Matters that are in the course of litigation are not grievable;

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- (2) A grievance may only be filed if an inmate is personally affected by a Department of Correction or institution action or policy. Inmates may not grieve matters outside the purview of the Department;
- (3) Allegations of employee misconduct, as defined in the 103 DOC 522, Internal Affairs Unit policy, (available at each inmate library and on the Department's website at <http://www.mass.gov/doc/policy>) shall be filed and reviewed administratively pursuant to the 103 DOC 522, Internal Affairs Unit policy. If such allegations are reported via the grievance process, the complaint shall be logged in by the IGC and the matter referred to the Superintendent for possible referral to the Internal Affairs Unit. If the matter is referred to the Internal Affairs Unit then the IGC shall utilize the IMS decision screen indicating that the grievance has been referred to the Internal Affairs Unit. In the rationale box inmates shall be provided the Internal Affairs' reference/intake number. For those allegations not referred by the Superintendent to the Internal Affairs Unit, the IGC shall collaborate with the institutional investigatory staff in the investigation of the allegations in order to respond to the inmate's grievance.
- (2) (4) Grievances filed by a group or on behalf of a group of inmates shall not be accepted.
- (3) (5) A grievance may only be filed concerning one subject matter.
- (4) A grievance shall be filed within ten working days of the actual incident or situation or within ten working days of the inmate's becoming aware of the incident or situation. Whenever a grievance is returned pursuant to 103 CMR 491.10(2) for improper format, the inmate shall have an additional three working days from the date of receipt to file a grievance in proper format.
- (5) Inmates who are illiterate, who cannot read or write legibly or who cannot speak English are authorized to obtain assistance from their case manager or other staff member. In cases where staff assistance is Grievances and appeals based on different events shall be presented separately unless it is not available, inmate assistance under staff supervision may be utilized necessary to combine the issues to support the claim.
- (6) Inmates shall not be subject to adverse action, including disciplinary charges, for utilizing the grievance procedure, except for inmates who abuse the grievance procedure by filing an excessive number of frivolous grievances or who intentionally and in bad faith misrepresent or omit material information.

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491.09 ~~Initiating A Grievance~~

- ~~(1) Forms Inmates may process their grievance by obtaining an institution (6)~~
~~A grievance shall be submitted to and processed by the institution where the incident occurred. If an inmate transfers before the resolution of the grievance, the receiving institution shall assist the sending institution by interviewing the inmate as necessary and provide any information that is not available at the sending institution. The grievance shall be decided by the institution where the incident occurred.~~

491.13 Grievance and Appellate Decisions

~~The IGC shall render decisions on grievances. The Superintendent shall serve as the appellate authority. When a grievance form from those locations and staff persons designated by the Superintendent. Grievance forms shall be readily available to all inmates, including those in segregated units.~~

- ~~(2) Content of Grievance Forms All grievances should be legible and must contain the following information:~~

- ~~(A) the date pertains to the grievance policy, institution grievance procedures, application of the grievance process, or other matters that, in the opinion of occurrence of the incident;~~
- ~~(B) the name of current institution;~~
- ~~(C) the name of institution of complaint;~~
- ~~(D) a brief statement of facts;~~
- ~~(E) the remedy being requested;~~
- ~~(F) the signatures of both the inmate and staff recipient.~~

- ~~(3) Filing Completed grievance forms may be filed as follows:~~

- ~~(A) directly with the Superintendent, Deputy present a potential conflict of interest, the Superintendent, Facility Administrator, or Institutional Grievance Coordinator; or;~~
- ~~(D) by depositing the completed form in a locked mailbox or drop box. All mailboxes or drop boxes identified for inmate grievances shall be opened at least once each working day;~~
- ~~(D) All grievances shall be forwarded may designate an alternate IGC to the Institutional Grievance Coordinator on the date received. The Institutional Grievance Coordinator shall sign, date stamp and number each grievance received.~~

491.10 Processing a Grievance

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- (1) ~~Upon receipt of an inmate's grievance the Institutional Grievance Coordinator shall:~~
- ~~(A) acknowledge receipt of~~investigate and/or render the grievance form through a written notification to the inmate;
 - ~~(B) ensure that the grievance complies with 103 CMR 491.09(2) and if not, return the grievance to the inmate with a written explanation;~~
 - ~~(C) interview the inmate and, if appropriate, the staff person responsible for the area where the problem occurred;~~
 - ~~(D) review staff efforts to resolve the issue informally, and proceed to exhaust all efforts of resolving the grievance;~~
 - ~~(E) investigate the factual basis of the grievance and propose a resolution or deny the grievance, within ten (10) working days from receipt of the grievance;~~
 - ~~(F) provide the inmate a written explanation regarding the proposed resolution or the reasons for the denial of the grievance.~~

~~(2) Proposed resolutions shall clearly state what specific corrective action will be taken.~~

~~(3) If satisfied with the proposed resolution, the inmate shall sign an acknowledgment form and the grievance procedure shall be considered resolved.~~

~~(4) Denied grievances shall inform the inmate of the right to appeal.~~

~~(5) Record Keeping and Distribution—Records of all institutional grievances shall be maintained by the Institutional Grievance Coordinator. A grievance log shall be maintained indicating the assigned number of the grievance, the date the grievance was received, the inmate's name and identification number, the facility where the inmate is housed, the subject of the grievance, and the decision made. The original grievance form shall be placed in the inmate's institutional file, a copy shall be maintained by the institutional grievance coordinator and a copy returned to the inmate.~~

~~491.11~~ Emergency Grievances

~~(1) An inmate who believes his grievance involves an issue for which a delay in resolution may cause a substantial risk of personal injury or other damages shall plainly mark the grievance form "EMERGENCY."~~

~~(2) Emergency grievances shall be evaluated by the Institutional Grievance Coordinator to determine whether it is, in fact, an emergency. If the matter is~~

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~~determined not to be an emergency, the grievance form shall be returned to the inmate for proper filing.~~

- ~~(3) Emergency grievances shall be processed in the same manner as other grievances, except that the process shall be completed within three working days of the filing of the grievance.~~

- ~~(4)(3) The Superintendent shall decide an appeal from the denial of an emergency grievance within five working days.~~

491.12 Appeal Process

~~The appeal process at each institution shall include the following:~~

- ~~(1) Filing An inmate whose grievance has been denied may appeal to the Superintendent. Appeal forms shall be made available from designated institutional staff. The original grievance form must accompany all appeal forms. The appeal form must be filed within ten (10) working days from receipt of a decision to the Superintendent unless 491.11 or 491.17 are applicable.~~
- ~~(2) Duties and Responsibilities Upon receipt of an inmate's appeal, the Superintendent's office shall date the form. Written notification of receipt of the grievance shall be forwarded to the inmate.~~
- ~~(3) Time Limits for Response The Superintendent shall respond to the grievant, in writing, within thirty (30) working days from receipt of the grievance.~~
- ~~(4) Approvals and Denials The Superintendent should specify in writing the reason(s) for his decision on each appeal. The Superintendent shall sign and date all appeal forms. In cases where the Institutional Grievance Coordinator's decision is modified or overturned, the specific corrective action which, is to be taken, if any, should be clearly stated. If satisfied with the proposed resolution, the inmate shall sign an acknowledgement form.~~
- ~~(5) Record keeping and Distribution The Superintendent shall maintain a record of all grievance appeals. The appeal and original grievance will be returned to the inmate, with copies distributed to the inmate's institutional file, and forwarded to the respective Institutional Grievance Coordinator.~~

491.13 Central Office Review

~~Whenever a grievance appeal to the Superintendent is denied, the appeal package and any relevant documentation shall be forwarded to the departmental grievance coordinator. The departmental grievance coordinator may take any action upon review of a grievance~~

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~~that the Superintendent is authorized to take under 103 CMR 491.12. Whenever a superintendent places limitations on an inmate's ability to file grievances pursuant to 103 CMR 491.17, a copy of the decision and any relevant documentation shall be forwarded to the departmental grievance coordinator.~~

491.14 Settlements

~~All property or monetary settlements resulting from grievances or appeals are to be approved by the Superintendent of the facility from which the grievance originated or by the departmental grievance coordinator.~~

~~The Institutional Grievance Coordinator shall ensure that all required information is on the form, i.e., physical description, monetary value, inmate signature, and witness.~~

~~The Superintendent or departmental grievance coordinator shall determine if the settlement is appropriate. All settlements will be recorded by the Institutional Grievance Coordinator in a Settlement Log and assigned a number.~~

~~491.15 Inmate Transfers~~

~~When an inmate is transferred after a grievance has been filed, but prior to its being resolved, the grievance, if still applicable, shall be processed by staff at the originating institution. When a transferred inmate files a grievance concerning a matter which arose at the sending institution, the Institutional Grievance Coordinator at the inmate's present institution shall process the grievance.~~

491.16 Grievance Withdrawals

~~Inmates wishing to withdraw grievance appeals should contact the Institutional Grievance Coordinator in writing. Grievance withdrawals and withdrawals of grievance appeals shall be maintained on file by the Institutional Grievance Coordinator and may be used for research, officer training and statistical data but shall not be placed in either the inmate's institution or Central Files~~

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~~491.17 Sexual Abuse Of the Grievance Process~~Grievances

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~~(1) Punishment or disciplinary actions shall not result from the inmate's filing of a complaint, or grievance unless the inmate demonstrates a pattern of abuse of this process by filing clearly frivolous, repetitious, or knowingly false documents.~~

(2) ~~An inmate who files five or more grievances in a week or twenty or more grievances in any 180 consecutive day period may be determined to be abusing the grievance procedure.~~

(3) ~~An inmate may be limited to not more than 10 active grievances at any one time, not including any emergency grievance(s).~~

(4) ~~Abuse of the grievance process shall be determined by the Superintendent where the inmate is housed. Upon a determination of abuse, limitations on the inmate's ability to file grievances may be imposed as follows:~~

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~~(A) The Superintendent may impose a suspension of the inmate's ability to file grievances for a length of time commensurate with the degree of abuse.~~

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~~(B) The length of suspension may be up to six months and may be increased for second and subsequent offenses in increments not to exceed six months.~~

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~~(C) Inmates under suspension shall normally be allowed to file emergency grievances.~~

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~~(D) Abuse of the emergency grievance procedures may lead to suspension of the ability to file emergency grievances as well.~~

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~~491.18 Extension of Time Periods~~

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~~The time periods referred to in 103 CMR 491.000 for filing a grievance or appeal or for response to any inmate grievance may be extended for a like period if the Institutional Grievance Coordinator or Superintendent determines that the initial period is insufficient to make an appropriate decision or if the inmate presents a legitimate reason for requesting an extension.~~

~~Written notice of all extensions shall be provided to the grievant.~~

~~491.19 Grievant's Failure to Comply with Time Limits~~

~~Failure by a grievant to comply with the time restrictions imposed by 103 CMR 491.000, unless waived by the Institutional Grievance Coordinator or Superintendent, shall terminate the grievance process.~~

~~491.20 Emergencies~~

~~Whenever in the opinion of the Commissioner, Deputy Commissioner or the Superintendent of a state correctional institution, an emergency exists which requires suspension of all or part of 103 CMR 491.00, a suspension may be ordered, except that any such suspension lasting beyond 48 hours must be authorized by the Commissioner.~~

~~491.21~~ Responsible Staff

~~The Superintendent of each institution shall be responsible for implementing and monitoring 103 CMR 491.00.~~

~~491.22~~ Annual Review Date

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~~103 CMR 491.00 shall be reviewed at least annually by the Commissioner or his designee. The party or parties conducting the review shall develop a memorandum to the Commissioner with a copy to the Central Policy File indicating revisions, additions, or deletions which shall be included for the Commissioner's written approval.~~

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~~491.23~~ Severability Clause

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~~If any article, section, subsection, sentence, clause or phrase of 103 CMR 491.00 is for any reason held to be unconstitutional, contrary to statute, in excess of the authority of the commissioner or otherwise inoperative, such decision shall not affect the validity of any other article, section, subsection, sentence, clause or phrase of 103 CMR 491.00.~~

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~~REGULATORY AUTHORITY~~

~~103 CMR 491.000: M.G.L. c.124, 1 (i) and (q) and c.127, 38E.~~

- (1) Time limits established in 103 CMR 491.154 (1) shall not apply to grievances alleging sexual abuse.
- (2) Inmates shall not be required to exhaust informal processes with regard to allegations of sexual abuse.
- (3) Inmates shall submit grievances regarding sexual assault/abuse in accordance with 103 CMR 491.14. (4). An inmate shall not be required to submit their grievance to a staff member who is the subject of the grievance.
- (4) All grievances containing allegations of sexual assault/abuse for inmate on inmate allegations will be investigated in accordance with 103 DOC 519, Sexually Abusive Behavior Prevention and Intervention with regard to inmate on inmate allegations. Staff on inmate allegations will be addressed in accordance with 103 DOC 522, Internal Affairs Unit policy, and/or 103 DOC 519, Sexually Abusive Behavior Prevention. Additionally, whenever a grievance pertaining to sexual abuse has been referred for investigation, inmates will be notified of the action taken within the grievance decision. A separate response from the Commissioner's designee will be provided upon conclusion of the indicated investigation.
- (5) Allegations of sexual abuse reported by third parties, including fellow, but not limited to, other inmates, staff members, family members, attorneys, and outside advocates, shall be addressed in accordance with 103 DOC 519, Sexually Abusive Behavior Prevention and Intervention and/or 103 DOC 522, Internal Affairs Unit policy, respectively. The Department of Correction shall document if an inmate declines to have the request processed on his / her behalf.
- (6) Whenever an inmate files an emergency grievance alleging that he or she is subject to a substantial risk of imminent sexual abuse, the grievance shall be responded to within forty-eight (48) hours of receipt. Emergency grievance appeals shall be responded to within five (5) calendar days of receipt. Responding staff should take into consideration weekends and holidays and shall respond on the business day prior to the weekend and/or holiday when necessary to ensure timely response. No timeframe extensions shall be authorized for grievance and grievance appeal responses for sexual abuse grievances.
- (7) During non-business hours, inmates shall report allegations of sexual abuse verbally to institution staff, who shall promptly report the allegations to the Shift Commander. Upon receipt of information that an inmate has been sexually abused, the Shift Commander shall ensure that proper protocol is followed in order to protect the potential victim and preserve any evidence.
- (8) The absence of a grievance response after six (6) months shall be deemed a denial of the grievance.

491.15 Filing a Grievance

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(1) An inmate shall file a grievance within ten (10) business days of the receipt of the step 1 informal complaint decision.

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(2) Inmates shall submit grievances by utilizing the designated form. Forms should be legible, presented in a courteous manner and should include:

(A) the date submitted ;

(B) the date the incident occurred;

(C) the name of the institution where the incident occurred;

(D) a complete statement of the facts relevant to the grievance. Statements should be brief and include only that information that is necessary to support the grievance;

(E) the remedy being requested;

(F) the inmate's signature; and

(G) the step 1 informal complaint form.

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(3) Inmates are encouraged to include the names of any witnesses or persons who may have information relevant to the grievance.

(4) Inmates shall submit completed grievance and appeal forms to the IGC or Superintendent in hand delivery, via institution mail, or in a locked box designated for grievance appeals and step 1 informal complaint forms. Institutions shall maintain a locked drop box/mailbox that is accessible to inmates who choose this method of delivery. Inmates in segregated units or hospital units shall deliver their grievances to staff, who shall immediately forward the grievance(s) to the IGC.

(5) The IGC or a superintendent's designee shall open all locked drop boxes identified for inmate step 1 informal complaint, grievance and appeal forms at least once each business day.

(6) All grievances submitted via a method other than the locked drop box pursuant to 103 CMR 491.15 (4) shall be forwarded on the business date received to the IGC.

(7) When applicable, grievances and appeals filed pursuant to 103 CMR 491.11 may be submitted via US mail or in accordance with 103 CMR 491.15 (4) and (6). Grievances and appeals submitted via this method shall be forwarded by the IGC at the receiving institution to the IGC at the institution where the incident occurred.

(8) Whenever a grievance is returned for non-compliance pursuant to 103 CMR 491.16 (3)(A), the inmate shall have an additional three (3) business days from the date of the inmate's receipt of the returned grievance to file a grievance in proper format.

- (9) The absence of a grievance response after six (6) months shall be deemed a denial of the grievance.

491.16 Grievance Processing, Investigation and Decision

- (1) Employees named in a grievance shall not participate in any capacity in the processing, investigation, or decision of the grievance.

- (2) The Superintendent or IGC may designate another staff member to perform duties defined in 103 CMR 491.15 (

- (3) Within one (1) business day of receipt of an inmate's grievance, the IGC shall:

(A) Ensure that the grievance complies with 103 CMR 491.15-(2) and if not, return the grievance to the inmate on the applicable form with a written explanation noted on the form. A copy of the return form shall be kept on file for future reference if needed.

(B) Within one (1) business day of receipt of a properly filed grievance, record receipt of the grievance, the description of complaint, the remedy requested, grievance type and all other relevant information in the IMS Grievance Details/Decision screen. If space permits, the description and requested remedy shall be entered as written by the inmate. If the written grievance exceeds the available space, the description shall be entered up until the point that IMS will not accept any additional characters. For the purpose of record keeping only, all grievances shall be entered into IMS regardless of timeliness or merit unless 103 CMR 491.14 (3)-(A) applies.

(C) Print the grievance form from IMS and provide it to the inmate as acknowledgement of receipt of the grievance.

(D) With the exception of grievances that are deemed non-grievable, withdrawn, referred to Internal Affairs Unit, or exceed the required time frames for submission, thoroughly investigate the factual basis of the grievance and exhaust all efforts to resolve the grievance. The investigation shall include, but not be limited to the following steps:

- (1) Interview the inmate and, if appropriate, the staff person responsible for the area where the problem occurred. Interview as many individuals as necessary identified through the interview or investigation process who might have information relevant to the claim. If upon initial review of the grievance or during the course of the investigation, it is determined that the complaint has merit and the grievance remedy is to be fully approved, it is not necessary to interview the inmate or other individuals.

- (2) Review staff efforts to resolve the issue informally.
- (3) Obtain all related documentation, including any relevant policies and procedures, and review them along with any documentation submitted by the inmate.
- (4) When appropriate, consult with institution and Departmental division heads responsible for the area involved.
- (5) Investigate and respond to all relevant issues raised in the grievance.
- (6) Take any other steps deemed necessary to investigate and/or resolve the grievance, including the determination of an appropriate remedy.

(E) When a requested remedy is approved, partially approved and/or an alternate remedy is offered, the specific corrective action taken shall be documented. When a grievance is denied or is non-grievable the reason shall be clearly documented. Applicable policies and procedures shall be cited when appropriate, including the process to be utilized to address non-grievable issues. All decision information shall be entered in the IMS Grievance Decision/Details screen.

(F) Print the grievance form from IMS and provide it to the inmate in order to inform the inmate of the decision.

(G) The IGC shall respond to the grievance within ten (10) business days from receipt of the grievance unless the inmate has been provided a written extension of time periods in accordance with 103 CMR 491.178.

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491.17 Appeal Process

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- (1) Upon receipt of the grievance decision, the inmate may appeal the decision to the appellate authority within ten (10) business days, unless 103 CMR 491.143 is applicable. The grounds for the appeal must be consistent with the issues raised in the original grievance. The remedy requested on appeal cannot exceed what was originally requested through the grievance.
- (2) No other level of appeal or review shall be allowed, including attempts to have the matter reconsidered in another forum, as the decision of the appellate authority shall stand as the final decision.
- (3) If any grievance is ruled non-grievable it may not be appealed substantively.

- (4) Inmates may not appeal a grievance decision where the decision is that the complaint is approved and the requested remedy is fully approved or when the grievance was withdrawn.
- (5) Inmates may not appeal grievances that exceed the required time frames for submission.
- (6) When the inmate signs a Resolution Agreement form in accordance with 103 CMR 491.4921, the decision shall be considered final and may not be appealed.
- (7) Inmate shall file appeals by completing and submitting the designated appeal form to the appellate authority. The form should be legible, presented in a courteous manner and should include the grievance number, date submitted, a brief statement of the facts regarding the grounds for the appeal, remedy requested, and the inmate's signature. Statements should include only that information which is necessary to support the grounds for the appeal.
- (8) Whenever an appeal is returned pursuant to 103 CMR 491.157 (12) (A), the inmate shall have an additional three (3) business days from the date of the inmate's receipt of the returned appeal to file an appeal in the proper format.
- (9) The individual who rendered the grievance decision shall forward the grievance file, including all non-IMS documents utilized in the investigation, to the appellate authority. The individual who rendered the grievance decision shall not be further involved in the appeal process. He or she may, however, at the discretion of the appellate authority, conduct further investigation and document it in IMS if additional facts or information is needed, providing that no recommendations or decisions are made by the IGC.
- (10) Employees named in a grievance or appeal shall not participate in any capacity in the processing, investigation, or decision, of the appeal, except as may be required pursuant to 103 CMR 491.16 (3)(D)(1) or 491.157 (12)(F)
- (11) The appellate authority may choose to designate another staff member to perform duties defined in 103 CMR 491.15 (12) (A), (B), (C), (D), (E), (F) and (H). The designee may also perform data entry pursuant to 103 CMR 491.15 (12) (G). The appellate authority shall, however, make an independent decision regarding the grievance appeal.
- (12) Within one (1) business day of receipt of an inmate's grievance appeal the appellate authority shall:
 - (A) Ensure that the appeal complies with 103 CMR 491.157 (4), (6), and (7) and, if not, return the appeal to the inmate on the applicable form with a written explanation noted on the form, indicating the reason the appeal has not been accepted. A copy of the returned form shall be kept on file for

future reference if needed. Additionally, a reference shall be made in IMS to document the return.

(B) Within one (1) business day of receipt of a properly filed appeal, record receipt of the appeal, the description of the appeal and all other relevant information in the IMS Grievance Appeal/Decision screen. If space permits in IMS, the description shall be entered as written by the inmate. If the written appeal exceeds the available space, the description shall be entered up until the point that IMS will not accept any additional characters.

(C) Print the appeal form from IMS and provide it to the inmate as acknowledgement of receipt of the grievance appeal.

(D) Review all grievance information directly in IMS as well as any non-IMS documents included in the investigation.

(E) Ensure that the grievance was thoroughly investigated and appropriately documented in IMS.

(F) Conduct additional investigation as needed, taking into consideration the basis of the appeal.

(G) Make a determination that takes into consideration the content of the appeal and the remedy requested. The rationale for the decision shall be clearly documented into the decision comments, and applicable policies and procedures shall be cited when appropriate. The appellate authority shall clearly document what specific corrective action will be taken when appropriate. All decision information shall be entered in the IMS Grievance Appeal/Decision screen.

(H) Print the grievance appeal form from IMS and provide it to the inmate to inform the inmate of the decision.

(13) The appellate authority shall respond to the grievant within thirty (30) business days from receipt of the grievance appeal unless the inmate has been provided a written extension of time periods in accordance with 103 CMR 491.168.

491.18 Extension of Time Periods

(1) The time periods for filing a grievance may be extended by ten (10) business days and the time period for responding to a grievance may be extended by (10) business days if the IGC or superintendent determines that the initial period is insufficient to make an appropriate decision or if the inmate presents a legitimate reason for requesting an extension. Unless extenuating circumstances exist, the time frame for filing a grievance shall not exceed twenty (20) business days and

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the time frame for responding to a grievance shall not exceed thirty (30) business days.

- (2) The time period for filing an appeal may be extended by ten (10) business days and the time period for responding to an appeal may be extended by thirty (30) business days if the appellate authority determines that the initial period is insufficient to make an appropriate decision or if the inmate presents a legitimate reason for requesting an extension. Unless extenuating circumstances exist, the time frame for filing an appeal shall not exceed twenty (20) business days and the time frame for responding to an appeal shall not exceed sixty (60) business days.
- (3) The extension periods for responding to emergency grievances and appeals may be extended by a like period of time if the individual responsible for rendering the decision determines that the initial period is insufficient to make an appropriate decision or if the inmate presents a legitimate reason for requesting an extension. Unless extenuating circumstances exist, one additional extension may be granted at the expiration of the initial extension period if the need still exists. Due to the nature of emergency grievances, every effort shall be made to file and respond to emergency grievances within the timeframes outlined in 103 CMR 49+1-47.
- (4) Extension information shall be documented in the applicable IMS Grievance screen and a written notice of all extensions shall be provided to the grievant on the applicable form.
- (5) An inmate's request for an extension shall be submitted in writing.

491.19 Emergency Grievances

- (1) The inmate grievance process is intended to address a wide range of issues, however, it is not meant to address safety issues of immediate and urgent concern. When faced with a serious incident of this nature, the inmate should contact the nearest staff member for immediate assistance.
- (2) An inmate may, however, file an emergency grievance when the inmate believes the grievance involves an issue for which a delay in resolution may cause a substantial risk of immediate harm to any person or destruction of personal property. Emergency grievances shall be plainly marked on the grievance form as "EMERGENCY."
- (3) An inmate shall not be required to submit a step 1 informal complaint form prior to filing an emergency grievance.
- (4) Upon receipt of an emergency grievance, the IGC shall immediately contact the Superintendent or designee, as indicated in institution procedures, who shall evaluate the grievance to determine whether an emergency exists. When a grievance is marked "EMERGENCY" the inmate shall be notified via the

applicable form if the matter is determined not be an emergency. Unless the inmate is suspended from filing grievances pursuant to 103 CMR 491.2+2, the inmate shall be advised that the grievance may be processed pursuant to 103 CMR 491.146.

- (5) Emergency grievances shall be processed in the same manner as other grievances, except that the decision shall be rendered within three (3) business days of the filing of the grievance. The emergency designation shall be documented in the IMS grievance Decision/Details screen.
- (6) Emergency grievance appeals shall be reviewed by the appellate authority in accordance with 103 CMR 491.157. The appellate authority shall respond to emergency grievance appeals within five (5) business days from the receipt of the appeal.

491.20 Grievance Withdrawals

Inmates wishing to withdraw a grievance or grievance appeal before a decision is rendered, should submit a grievance/appeal withdrawal form to the IGC or appellate authority indicating why they have withdrawn their grievance or grievance appeal. All withdrawals shall be voluntary. The withdrawal shall be documented in the IMS Grievance Details/Decision or Grievance Appeal/Decision screen. The original withdrawal form shall be maintained on file by the IGC.

491.21 Property and Monetary Resolutions

- (1) All proposed property or monetary resolutions resulting from grievances or appeals are to be approved by the Superintendent or Department Grievance Manager on the appropriate Resolution Agreement form before offering the inmate a resolution. The IGC shall ensure that the physical description and monetary value is noted on the form prior to proposing the settlement to the Superintendent or Department Grievance Manager.
- (2) When an inmate accepts a resolution offer, the inmate shall sign the Resolution Agreement form acknowledging same. Once signed, the decision shall be considered final and may not be appealed. All settlements shall be documented in the IMS Grievance Details/Decision screen.
- (3) An inmate's refusal to sign the form shall be documented on the Resolution Agreement and in the applicable IMS Grievance Details/Decision screen, and the resolution offered shall be considered withdrawn.

491.22 Abuse Of the Grievance Process

- (1) All grievances must be presented in good faith and for good cause. Inmates shall not deliberately misuse the grievance process.

- (2) Inmates who misuse the grievance process by filing any combination of five (5) or more non-grievable, clearly frivolous, and/or repetitious grievances in one hundred and eighty (180) consecutive day period are subject to suspension of grievance privileges and/or disciplinary action.
- (3) Inmates who misuse the grievance process by knowingly submitting false documents, intentionally and in bad faith misrepresenting or omitting material information or utilizing threatening or abusive language or language that otherwise constitutes a violation of 103 CMR 430, Inmate Discipline, are subject to suspension of grievance privileges and/or disciplinary action.
- (4) An inmate who files five (5) or more grievances in a week or twenty (20) or more grievances in any one hundred and eighty (180) consecutive day period may be determined to be abusing the grievance procedure. However, abuse shall not be determined solely on the number of grievances. The assessment shall also take into consideration the nature of the grievances and whether or not any other abuse factors identified in 103 CMR 491.292 exist.
- (5) An inmate may be limited to not more than ten (10) active grievances that are pending decision at any level at any one time, not including any emergency grievances.
- (6) Abuse of the grievance process shall be determined by the Superintendent where the inmate is housed. Upon a determination of abuse, limitations on the inmate's ability to file grievances may be imposed as follows:
- (A) Suspension of the inmate's ability to file grievances for a length of time commensurate with the degree of abuse.
- (B) The length of suspension may be up to six (6) months and may be increased for second and subsequent offenses in increments not to exceed six (6) months.
- (C) Inmates under suspension shall normally be allowed to file emergency grievances.
- (7) Abuse of the emergency grievance procedures may lead to suspension of the ability to file emergency grievances and may also lead to an extension of the original suspension period.
- (8) Inmates shall receive a grievance suspension notification form if the superintendent deems the suspension appropriate.
- (9) In the event that an inmate transfers to another institution, the suspension shall remain in effect.

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491.23 Evaluation of the Grievance Process

(1) Reporting Requirements

(A) The superintendent of each institution shall ensure that monthly and annual reports are submitted to the Department Grievance Manager. The reports shall include statistical information as well as evaluative comments regarding the grievance process at the institution.

(B) The Department Grievance Manager shall collect and analyze the quantity and nature of all grievances filed departmentally on a monthly and annual basis in order to evaluate the effectiveness of the inmate grievance process. The report shall include statistical information as well as evaluative comments and shall be submitted to the Director of Communications and Administrative Resolution. The Director of Communications and Administrative Resolution shall review the reports to identify trends or emerging problems and determine if any corrective action is needed.

(2) Audit Requirements

(A) Each Superintendent shall designate a staff person who is not an IGC, to randomly audit 10% or a maximum of ten (10) grievances semi-annually to assess adherence to policy, quality of investigations, decisions and IMS data entry requirements. Corrective action shall be taken when deficiencies are identified. Different grievances shall be audited each period. The results of such audits shall be submitted to the Department Grievance Manager for appropriate review.

(B) An audit of each institution shall be conducted annually to assess compliance with policy objectives, quality of investigations, decisions, and IMS data entry requirements. The audit shall consist of a random sample of grievances from each institution. The Department Grievance Manager shall review the audit results and notify the Director of Communications and Administrative Resolution of any identified trends or emerging problems. The Director of Communications and Administrative Resolution may request additional corrective action as needed.

(3) Monitoring Requirements

(A) The Superintendent shall actively monitor the grievance process at the institution. The Superintendent or designee shall run IMS queries as needed to identify any areas that may require attention or corrective action, including but not limited to, data quality.

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(B) The Department Grievance Manager shall actively monitor the grievance process at all the institutions and run IMS queries as needed or directed by the Director of Communications and Administrative Resolution to identify any areas that may require attention. The Department Grievance Manager shall take corrective action as needed or directed.

(C) The Department Grievance Manager may conduct a review of any appellate decisions and, if deemed appropriate, may take any action that the Superintendent is authorized to take pursuant to 103 CMR 491.157. Institution staff shall not interfere with or otherwise attempt to influence the review and decision of the Department Grievance Manager. When any decision is overturned, the Department Grievance Manager shall advise the superintendent of the findings.

491.24 Record Keeping

(1) All grievance records shall be considered confidential and shall not be filed in the inmate's six-part folder.

(2) IMS is the primary, permanent record of inmate grievances. The assignment of profiles and access to the Grievance module screens shall be limited and based on a need to know basis. Access and use shall be in accordance with 103 DOC 751, Information Technology and Security.

(3) The original handwritten grievance and appeal forms submitted by the inmate and all non-IMS supporting documents shall be maintained in the IGC's file.

491.25 Emergencies

Whenever, in the opinion of the Commissioner, Deputy Commissioner or the Superintendent of a state correctional institution, an emergency exists which requires suspension of all or part of 103 CMR 491, Inmate Grievances, a suspension may be ordered, except that any such suspension lasting beyond forty-eight (48) hours must be authorized by the Commissioner.

491.26 Responsible Staff

The Superintendent of each institution, the Director of Communications and Administrative Resolution and the Department Grievance Manager shall implement and monitor 103 CMR 491, Inmate Grievances.

491.27 Annual Review Date

The Commissioner or a designee shall review at least annually 103 CMR 491, Inmate Grievances. The party or parties conducting the review shall develop a memorandum to the Commissioner with a copy to the Central Policy File indicating revisions, additions,

or deletions which shall be included for the Commissioner's written approval, and shall become effective pursuant to applicable law.

491. 28 Severability

If any article, section, subsection, sentence, clause or phrase of 103 CMR 491 is for any reason held to be unconstitutional, contrary to statute, in excess of the authority of the commissioner or otherwise inoperative, such decision shall not affect the validity of any other article, section, subsection, sentence, clause or phrase of 103 CMR 491, Inmate Grievances.

REGULATORY AUTHORITY

~~December 2015~~ 103 CMR 491: M.G.L. c.124, 1 (i) and (q) and c.127, 38E.

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